

HARRIS  
ST. LAURENT  
WECHSLER

The request is granted. Defendant's surrender date is extended to November 5, 2021 to allow for his surgery and recovery period.

SO ORDERED.

/s/ Alvin K. Hellerstein

September 30, 2021

September 22, 2021

**BY ECF**

Hon. Alvin K. Hellerstein  
United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, NY 10007

Re: United States v. David Wagner, et. al., 19-cr-437 (AKH)

Dear Judge Hellerstein:

I write to respectfully request that the Court extend the surrender date for Mr. Lawrence from the current date of October 12, 2021 to December 13, 2022 (a Monday), in order to allow Mr. Lawrence to undergo a necessary surgical procedure and in light of the continuing COVID-19 pandemic. As explained in more detail below, the government consents to a shorter extension of time, to November 5, 2021, but opposes the balance of the extension sought by this application.

Mr. Lawrence's Background & Condition

Mr. Lawrence is a 67-year old man who was sentenced by the Court principally to a term of 55-months incarceration on June 9, 2021. The Court set a surrender date of October 12, 2021.

Prior to his convictions in this case, Mr. Lawrence had no criminal record and no previous contact with law enforcement. His convictions here, while serious, are all for non-violent fraud offenses. He has complied with every condition of release since his arraignment and has made every required court appearance and meeting with Pretrial Services and Probation. (PSR, ¶ 11). He has remained consistently employed since his arrest, and is currently employed by Miss Mary, a behavioral health provider, as an administrative consultant. (PSR. ¶ 144).

As noted in his sentencing submission, Mr. Lawrence suffers from a number of medical conditions, including a lower back injury that required surgery in 2019, a craniopharyngioma that required surgery in 2008, and ventricular tachycardia that has been treated with medication since 2006. (PSR, ¶¶ 129-130). Significantly for this application, he suffers from an enlarged prostate and elevated levels of prostate specific antigens. (PSR, ¶ 131).

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### Mr. Lawrence Requires Surgery on His Prostate

As described in the attached note from his doctor, Dr. Truesdale (attached as Exhibit A), Mr. Lawrence needs a procedure to address his enlarged prostate, a Transurethral Urethral Resection of Prostate. While Mr. Lawrence has been able to schedule a date for surgery of October 6<sup>th</sup> that is before his current surrender date of October 12<sup>th</sup>, there are a number of after-care appointments that would conflict with an October 12<sup>th</sup> surrender date as well as a 4-week period following the surgery of substantial physical restrictions.

The relatively brief extension of Mr. Lawrence's surrender date would not affect the severity of the punishment the Court has imposed. No reduction of the sentence would result and Mr. Lawrence will still face the same punishment. The Court granted a similar request to Mr. Lawrence's co-defendant David Wagner earlier this year. (Docket No. 113).

### Although vaccinated, Mr. Lawrence Faces Substantial Risks of Covid-19 at FCI Coleman

We respectfully also ask that the Court extend Mr. Lawrence surrender date by two months, to December 13, 2021 due to the uncertainty caused by the currently surging coronavirus Delta variant among unvaccinated and vaccinated people alike, and the ongoing risk of severe infection among people like Mr. Lawrence who are older and already face medical challenges.

This may allow enough time to pass to reduce the risk that Mr. Lawrence will contract COVID-19 at Coleman FCI, the facility to which Bureau of Prisons has designated him. FCI Coleman currently has the largest number of inmates testing positive for coronavirus of any BOP facility.<sup>1</sup> There has been a "recent surge in the pandemic as a result of the spread of the Delta variant." *United States v. Robles*, No. 08 CR. 1114 (PAE), 2021 WL 3524067, at \*8 (S.D.N.Y. Aug. 10, 2021). Coronavirus cases increased 18% in the last two weeks of August 2021 and deaths increased 75%.<sup>2</sup> "Delta is currently the predominant strain of the virus in the United States."<sup>3</sup> As expected by the increasing number of cases, the "Delta variant is highly contagious, more than 2x as contagious as previous variants." *Id.* Florida, the state in which Mr. Lawrence lives and FCI Coleman is located, is undergoing the worst surge of coronavirus of the entire pandemic: "More people in Florida are catching the coronavirus, being hospitalized and dying of Covid-19 now than at any previous point in the pandemic, underscoring the perils of limiting public health measures as the Delta variant rips through the state."<sup>4</sup>

Mr. Lawrence received the second dose of the COVID-19 vaccine on March 26, 2021 and expects to receive a "booster" dose later this month. But while vaccinations offer some protection, unlike previous variants of the coronavirus, "the Delta variant seems to produce the same high

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<sup>1</sup> <https://www.levittandkaizer.com/post/september-15-2021-compassionate-release-and-bop-covid-19-blog>

<sup>2</sup> N.Y. Times, Coronavirus in the U.S.: Latest Map and Case Count (updated Sept. 2, 2021), <https://www.nytimes.com/interactive/2021/us/covid-cases.html>

<sup>3</sup> CDC, Delta Variant: What We Know About the Science, <https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html>.

<sup>4</sup> <https://www.nytimes.com/2021/08/25/us/florida-covid-deaths.html?searchResultPosition=2>

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amount of virus in both unvaccinated and fully vaccinated people.”<sup>5</sup> For example, in August 2021, at least three United States senators who were vaccinated have tested positive and had symptoms, as has Texas Governor Greg Abbott, who was also previously vaccinated.<sup>6</sup> Data from Israel shows a marked decline in vaccine efficacy after six months, with effectiveness in preventing infection and symptomatic illness as low as 64%.<sup>7</sup>

Although severe infection is more common among the unvaccinated, so-called “breakthrough” infections in vaccinated individuals can cause serious complications. To date there have been 3,040 COVID deaths among vaccinated people and an additional 12,750 non-fatal hospitalizations.<sup>8</sup> The majority of these people (87% and 70%, respectively) were sixty-five and older, the segment of the population Mr. Lawrence falls into. *Id.* These numbers will continue to grow as the number of breakthrough infections rises nationally. *Id.*

On top of this, “[p]risons are tinderboxes for infectious disease.” *United States v. Jeremy Rodriguez*, No. 03 Cr. 271 (AB), ECF Docket No. 135 (E.D. Pa. Apr. 1, 2020) (granting inmate’s compassionate release motion and collecting research explaining the greater risk of infectious disease spread in detention facilities). By their very nature, prisons keep people together, and use communal spaces for living and eating—which is precisely opposite from the guidance of the Center for Disease Control (CDC) to socially distance from others.<sup>9</sup> Even before the spread of the contagious Delta variant, the rate of COVID-19 cases in prisons was more than four times that of the general population and the COVID-19 mortality rate in prisons was twice as large as that of the general U.S. population.<sup>10</sup>

As previously noted, FCI Coleman, where Mr. Lawrence is due to serve his sentence, has the *highest* number of COVID-19 infections of any Bureau of Prisons facility.

### The Government’s Position

We have consulted with the Government, which consents to an extension of the defendant’s surrender date for approximately 3.5 weeks until November 5, 2021, to accommodate the

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<sup>5</sup> CDC, Delta Variant: What We Know About the Science, <https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html>.

<sup>6</sup> N.Y. Times, Three Vaccinated Senators Have Tested Positive for the Virus (Aug. 19, 2021), <https://www.nytimes.com/2021/08/19/us/politics/roger-wicker-angus-king-covid-positive.html>; CNN, Texas Gov. Greg Abbott Tests Positive for COVID-19 (Aug. 17, 2021), <https://www.cnn.com/2021/08/17/politics/texas-governor-greg-abbott-covid-19/index.html>.

<sup>7</sup> NPR, Highly Vaccinated Israel Is Seeing a Dramatic Surge in New COVID Cases. Here’s Why (Aug. 20, 2021), <https://www.npr.org/sections/goatsandsoda/2021/08/20/1029628471/highly-vaccinated-israel-is-seeing-a-dramatic-surge-in-new-covid-cases-heres-why>; Israel Ministry of Health Press Release: Decline in Vaccine Effectiveness Against Infection and Symptomatic Illness (May 7, 2021), <https://www.gov.il/en/departments/news/05072021-03>.

<sup>8</sup> CDC, COVID-19 Vaccine Breakthrough Case Investigation and Reporting (updated Sep. 17, 2021), <https://www.cdc.gov/vaccines/covid-19/health-departments/breakthrough-cases.html>.

<sup>9</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>; see also Laura Hawks et al., COVID-19 in Prisons and Jails in the United States, *JAMA Internal Medicine* (Apr. 28, 2020), <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2765271> (explaining how the infrastructure of a prison is conducive to spreading disease).

<sup>10</sup> National Commission on COVID-19 and Criminal Justice, COVID-19 in U.S. State and Federal Prisons (2020), [https://build.neoninspire.com/counciloncj/wp-content/uploads/sites/96/2021/07/FINAL\\_Schnepel\\_Design.pdf](https://build.neoninspire.com/counciloncj/wp-content/uploads/sites/96/2021/07/FINAL_Schnepel_Design.pdf).

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defendant's surgery and four-week period of recovery. The Government notes that the need for this surgery arose recently and that this is the defendant's first request for such an extension. The Government maintains that the Covid-19 pandemic does not warrant extending the surrender date beyond November 5, 2021 because the defendant is fully vaccinated, BOP's Covid-19 vaccination program is well underway, and the defendant is not currently within the category of individuals for whom the CDC recommends (or the FDA has approved) either a third dose of the Covid-19 vaccine or a booster.

Conclusion

Mr. Lawrence has done what has been asked of him by the Court to date. This is his first request for an extension of his surrender date, and is justified by the surgery he seeks to address his enlarged prostate and by his desire to minimize, to the extent possible, his likelihood of contracting COVID-19.

We respectfully request that the Court grant the requested relief.

Respectfully,



Andrew St. Laurent

w/encl.

cc: AUSA Jilan Kamal, Esq. (w/encl.)  
AUSA Sagar Ravi, Esq. (w/encl.)



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September 15 2021

Regarding: Marc Lawrence  
305 Marshall Street  
Clearwater FL, 33755  
Medical ID 334499

To Whom it May Concern

This patient is scheduled for October 6th 2021 for a Transurethral Urethral Resection of Prostate procedure at Morton Plant Hospital. He will have several post operative appointments after this procedure. The first will be Friday October 8th, and the next appointment will be two weeks later to review pathology report, we do not have a set date for that appointment as of yet. During the post operative period, he is restricted from heavy lifting anything over ten pounds for four weeks. After the four weeks he is cleared to resume normal activities. Please let me know if there are any questions or concerns

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